

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
SEPTEMBER 16, 2008**

ITEM 5

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS REGARDING THE EAST CONTRA COSTA COUNTY INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) IMPLEMENTATION GRANT ALTERNATIVE INTAKE PROJECT (COMPONENT 4)

DISCUSSION

In November 2002, the California voters approved the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, (Stats. 2003, ch. 493). It amended the California Water Code to add, among other articles, § 79560 et seq., authorizing the Legislature to appropriate funding for IRWM projects. The intent of the IRWM Grant Program is to provide funding via competitive grants for projects that protect communities from drought, protect and improve water quality, and improve local water security by reducing dependence on imported water while encouraging water management on a regional level.

Proposition 50 authorizes approximately \$360 million to implement these projects. The IRWM Grant Program is administered jointly by the State Water Resources Control Board (State Water Board) and the Department of Water Resources (DWR). The IRWM Program Guidelines were adopted by the State Water Board and approved by DWR in November 2004. On March 20, 2007, the State Water Board adopted an IRWM Implementation Grant Funding List with grants totaling \$75 million (Resolution 2007-0011) and DWR approved an IRWM Implementation Grant Funding List with grants totaling \$57 million.

Component 4 is part of the larger East Contra Costa County IRWM Implementation Project that was awarded funds by the State Water Board as part of the IRWM Grant Program. Component 4 was approved for \$4.8 million of the \$12.5 million awarded to the East Contra Costa County IRWM Implementation Project.

The East Contra Costa County IRWM Project will provide funds to assist in the construction of Component 4, including the construction of an intake and a new pump station with fish screens, electrical substation and building (Item 2.4.6). Component 4 involves relocating some of the Contra Costa Water District pumping from the existing Old River intake to the new location along Victoria Canal during certain periods of the year to obtain better water quality. The alternative intake would divert up to 250 cubic feet per second on Victoria Canal. The State Water Board has not previously made findings regarding Component 4 pursuant to the California Environmental Quality Act (CEQA).

The District and the Bureau of Reclamation (BOR) jointly prepared an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) that addresses Component 4. The District is the lead agency under CEQA, while the BOR is the National Environmental Policy Act lead agency. The EIR/EIS was circulated to the public and distributed through the State Clearinghouse (State Clearinghouse No. 2005012101) for public review from May 3, 2006, through June 16, 2006.

The comment period was extended to August 22, 2006, to provide the San Luis Delta Mendota Water Authority and Westlands Water District additional time to resolve concerns and reach an agreement.

The District received the following comment letters:

1. The U. S. Environmental Protection Agency (EPA) supports the Project purpose and the Proposed Action, but they noted that the Modified Operations alternative provides the greatest benefit to fish.
2. The State Water Board, Division of Water Rights commented that the quantity of water diverted by the District and the effects of the new intake on water quality or water levels represent potential injury to other users of water. Prior to receiving approval from the State Water Board to change the water rights associated with the Project, the District and the U.S. Bureau of Reclamation must show that these changes will not injure other legal users of water.
3. The California State Lands Commission (CSLC) commented that if the District obtains a permit from the U. S. Army Corps of Engineers, then a lease is not required from the CSLC.
4. The Department of Transportation (Caltrans) commented that an encroachment permit is required if any work or traffic controls encroach onto the State Right of Way.
5. The San Joaquin Air Control District (SJACD) requires compliance with District Rule 9510, which is an Indirect Source Review requiring transportation projects to reduce emissions of oxides of nitrogen (NO_x) and fine particulate matter (PM₁₀). SJACD stated that the District identified a number of measures required under SJACD Regulation VIII, which should not be mistaken for mitigation measures. They also identified an erroneous citation to a person not employed by the SJACD.
6. The following entities had the same concerns that the Project will degrade water quality for the State Water Project, Central Valley Project, Delta Wetlands Project or In-Delta Storage Project and other water users:
 - a) Department of Water Resources
 - b) Santa Clara Valley Water District (SCVWD) and Zone 7 Water Agency (Zone 7)
 - c) Diepenbrock Harrison on behalf of the San Luis & Delta-Mendota Authority and Westlands Water District
 - d) Metropolitan Water District of Southern California, e) Nomellini, Grilli & McDaniel on behalf of the Central Delta Water Agency and Reclamation District No. 2040 (Nomellini, Grilli & McDaniel)
 - e) South Delta Water Agency
 - f) Kronick, Moskovitz, Tiedemann & Girard on behalf of the Kern County Water Agency in cooperation with the State Water Contractors
 - g) State Water Contractors
 - h) Delta Wetlands Project
7. Delta Wetlands Project also requested the District include a discussion on cumulative impacts, including a water quality impact analysis on future projects in the area and effects from climate change. Nomellini, Grilli & McDaniel suggested that the disposal of dewatering water be covered under the appropriate National Pollutant Discharge Elimination System (NPDES) permit to allow for direct discharge into the Old River or Victoria Canal. SCVWD and Zone 7 stated that the water quality impact analysis was inadequate as the impacts were presented as long-term averages that minimize impacts.

The District responded to all comments, provided clarifications, revised the draft EIR/EIS as appropriate, and incorporated these responses in the final EIR/EIS. The District is working with the State Water Board's Division of Water Rights to update its water rights permit. The District certified the final EIR/EIS, adopted the Mitigation Monitoring Plan and a Statement of Overriding

Considerations (SOC), and approved Component 4 on November 15, 2006. The District filed a Notice of Determination with the Contra Costa County Clerk and the Governor's Office of Planning and Research on November 16, 2006. On May 2, 2008, the BOR adopted the EIR/EIS, approved Component 4, and posted a Record of Decision (ROD) on their website. Implementation of the ROD is contingent on State Water Board approval of the related water rights petition.

State Water Board staff reviewed and considered the EIR/EIS and applicable environmental documents, and determined that Component 4 will improve existing water quality conditions.

Component 4 implements Item 2.4.6 of the Grant Agreement. Component tasks include installing and constructing intake, pump station with fish screens, and electrical substation and building.

The District adopted an SOC to substantiate its decision to approve Component 4 despite significant and unavoidable impacts to the areas of 1) agricultural resources (the conversion of approximately six to eight acres of Prime Farmland and Farmland of Statewide Importance), and 2) air quality (construction emission exceedances). State Water Board staff finds that the following specific economic, social, technological, and environmental benefits of Component 4 outweigh the unavoidable adverse environmental impacts:

- a. Component 4 will deliver high-quality water to meet the District's Board-adopted water quality objectives, particularly during the late summer and fall and during drought periods when Delta source water quality is typically lowest;
- b. Component 4 will ensure that drinking water meets or exceeds Federal and State drinking water regulations, and will protect public health by reducing salinity and disinfection byproduct precursors;
- c. Component 4 will increase operational flexibility at District facilities. It will maintain the benefits of the Los Vaqueros Project by extending the time periods for available Delta water of sufficient quality to fill the reservoir and allow direct water use without the need for blending with reservoir water; and
- d. Component 4 will decrease fish losses through entrainment and impingement at existing District Delta intakes.

POLICY ISSUES

Should the State Water Board:

Adopt a Statement of Overriding Considerations regarding the East Contra Costa County IRWM Implementation Grant Component 4?

FISCAL IMPACT

None

REGIONAL WATER BOARD IMPACT

None

STAFF RECOMMENDATIONS

The State Water Board should:

Adopt a Statement of Overriding Considerations regarding the East Contra Costa County IRWM Implementation Grant Component 4.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2008-

ADOPT A STATEMENT OF OVERRIDING CONSIDERATIONS REGARDING
THE EAST CONTRA COSTA COUNTY INTEGRATED REGIONAL WATER MANAGEMENT (IRWM)
IMPLEMENTATION GRANT ALTERNATIVE INTAKE PROJECT (COMPONENT 4)

WHEREAS:

1. The Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, authorizes approximately \$360 million to implement projects that protect communities from drought, protect and improve water quality, and improve local water security by reducing dependence on imported water while encouraging water management on a regional basis;
2. The Integrated Regional Water Management (IRWM) Grant Program is administered jointly by the State Water Resources Control Board (State Water Board) and the Department of Water Resources (DWR);
3. The IRWM Program Guidelines were adopted by the State Water Board and approved by DWR in November 2004;
4. On March 20, 2007, the State Water Board adopted an IRWM Implementation Grant Funding List with grants totaling \$75 million ([Resolution No. 2007-0011](#));
5. In March 2007, DWR adopted an IRWM Implementation Grant Funding List with grants totaling \$57 million;
6. The East Contra Costa County IRWM Implementation Project was on the March 20, 2007, IRWM Implementation Grant Funding List approved by the State Water Board;
7. Component 4 is part of the East Contra Costa County IRWM Project;
8. The Contra Costa Water District (District) and the Bureau of Reclamation (BOR) prepared a final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) that addresses Component 4 (State Clearinghouse No. 2005012101);
9. The District certified the final EIR/EIS, adopted the Mitigation Monitoring Plan (MMP) and a Statement of Overriding Considerations (SOC), and approved Component 4 on November 15, 2006;
10. The District filed a Notice of Determination (NOD) with the Contra Costa County Clerk and the Governor's Office of Planning and Research on November 16, 2006;
11. On May 2, 2008, BOR adopted the EIR/EIS and a Record of Decision (ROD) and approved Component 4. However, implementation of the ROD is contingent upon the State Water Board approval of the related water rights petition;

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12. The District adopted an SOC to substantiate its decision to approve Component 4 despite significant and unavoidable impacts to the areas of air quality (short-term emissions exceed Air Quality District significance thresholds during project construction even with mitigation incorporated) and the conversion of approximately six to eight acres of Prime Farmland and Farmland of Statewide Importance;
13. The State Water Board has not made findings regarding Component 4 of the East Contra Costa County IRWM Implementation Project pursuant to the California Environmental Quality Act;
14. The State Water Board finds that the following specific economic, social, technological, and environmental benefits of the Project outweigh these unavoidable adverse environmental impacts:
 - a. Component 4 will deliver high-quality water to meet the District's Board-adopted water quality objectives, particularly during the late summer and fall and during drought periods when Delta source water quality is typically lowest;
 - b. Component 4 will ensure that drinking water meets or exceeds Federal and State drinking water regulations and will protect public health by reducing salinity and disinfection byproduct precursors;
 - c. Component 4 will increase operational flexibility at District facilities. It will maintain the benefits of the Los Vaqueros Project by extending the time periods for available Delta water of sufficient quality to fill the reservoir and allow direct water use without the need for blending with reservoir water; and
 - d. Component 4 will decrease fish losses through entrainment and impingement at existing District Delta intakes.
15. State Water Board staff reviewed and considered the EIR/EIS and applicable environmental documents, and determined that Component 4 will improve water quality conditions.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

Adopts a Statement of Overriding Considerations regarding the East Contra Costa County IRWM Implementation Grant Component 4.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 16, 2008.

Jeanine Townsend
Clerk to the Board